

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 11-09-2007

CORAM

THE HONOURABLE MR.JUSTICE S.PALANIVELU

CRIMINAL REVISION CASE No.368 OF 2007

M.Kumarasamy ... Petitioner/Appellant

-vs-

V.Sivaraj Karthikeyan ... Respondent/Respondent

Revision against the order, dated 28.02.2007, made in Crl.M.P.No.16 of 2006 in C.A.No.135 of 2006, on the file of Fast Track Court No.III, Dharapuram.

For petitioner : Mr.N.Manokaran

J U D G M E N T

Petitioner is the appellant before the Fast Track Court No.III, Dharapuram, in C.A.No.135 of 2006, which he preferred against the conviction passed by the Judicial Magistrate, Dharapuram, in C.C.No.108 of 2003, which was taken up on file, on the complaint preferred by the respondent herein under Section 138 of the Negotiable Instruments Act. He filed an application before the Fast Track Court to receive an audio cassette and the typed matter of recorded version contained in the said audio cassette. It was stated by the petitioner that he delivered a blank signed cheque to one Muthusamy as security in a chit transaction, but, it was, thereafter, given to the respondent, who misused it and lodged a complaint, claiming a sum of Rs.5.00 lakhs, on the strength of the said cheque. It was the defence of the petitioner that he does not know who the respondent was; the cheque was not at all supported by any consideration; pending the proceedings before the Judicial Magistrate, there was a discussion among the Surya Finance Muthusamy and its partners Varadarajan and Nataraj with regard to the receipt of the said cheque by the respondent and the said conversation was recorded by the petitioner in an audio cassette and the said audio cassette was sought to be received as additional evidence in the appeal before the Fast Track Court, Dharapuram, under Section 391 Cr.P.C.

2. The above said allegations in the petition were controverted to by the respondent in his counter before the said Court, contending that no such discussion took place as stated; the petitioner had not filed any application nor did he represent the alleged discussion before the Judicial Magistrate Court; no such petition was filed before the Court below and hence his request would not be entertained.

3. I have given my thoughtful consideration to the rival submissions.

4. Learned counsel for the petitioner would submit that the admissibility as to the receipt of tape recorded evidence has been recognised by the judicial pronouncements and, in fact, a Constitution Bench of the Hon'ble Supreme Court has also held that such evidence is admissible. The learned counsel garnered support from a decision rendered by the Constitution Bench of the Supreme Court in *Pratap Singh v. State of Punjab*, AIR 1964 Supreme Court 72 (V 51 C7), in which the following principles have been formulated :

"The tape recorded conversation between a person and other person talking with him can only be corroborative evidence of the statement of the former that the other person had made such and such statements, but cannot be direct or primary evidence that a third person had stated what the other speaker had told the former. Tape-recordings can be legal evidence by way of corroborating the statements of a person who deposes that the other speaker and he carried on that conversation or even of the statement of a person who may depose that he overheard the conversation between the two persons and what they actually stated had been tape-recorded. Weight to be given to such evidence will depend on the other factors which may be established in a particular case. It cannot be held that the record of the conversation on a tape-record is not admissible in evidence for any purpose."

5. In the above said decision, it has been further held that merely on the ground that there is every possibility of tampering with the recorded conversation, it cannot be said that it is inadmissible in evidence.

6. Learned counsel for the petitioner also pointed out that receiving of additional evidence in the appellate stage in view of Section 391 Cr.P.C. has to be liberally viewed by the Courts and if there is any irregularity or defect in the trial Court proceedings, it could be cured in the appellate Court, however, such power shall not be exercised to fill up the lacuna, but to subserve the ends of justice. These principles have been laid down in *Rambhau v. State of Maharashtra*, 2001 (2) CTC 699.

7. The law on this point has been well settled that the tape recorded evidence is admissible in evidence. But, here, we have to see whether the claim of the petitioner is a bona fide one and whether the relief prayed for is required for meeting the ends of justice.

8. The crux of the contention of the petitioner is that he took steps before the Judicial Magistrate for receipt of this evidence, but it was rejected. However, the fact remains that the petitioner has not at all moved his little finger before the trial Court to put forth his plea as to the availability of such evidence with him at the time of trial of the case. In fact, the oral evidence was recorded by the trial Court on 24.03.2006, whereas the alleged conversation was recorded on 01.01.2006 and 02.01.2006. When that be so, even though he had not filed the petition for receipt of the said evidence, at least, he might have deposed about the fact in his oral evidence, which is admittedly not done. Only before the appellate Court, he came forward with the request and the Fast Track Court rightly rejected the same. The finding of the learned Fast Track Judge that the petition was filed only to procrastinate the proceedings is appropriate.

9. It is the further contention of the petitioner that in case of the evidence being received by the Court, if it is objected to by the other side, it could be proved by an expert. It is also argued that the Court below has failed to note that the spectrographic technique is a well established scientific test to examine the voice identification; every voice is unique and individually characteristic enough to distinguish it from others through analysis; voices are identified through comparative voice prints; the process of identifying the voices visually involves translating the wave patterns produced by the voice into a pictorial display called a spectrogram and that the competently trained and certified experts are available to test the accuracy of tape recorded voice.

10. This Court is not able to accept the said contention, because, had the petitioner been in possession of the evidence, he should have taken steps by producing it before the trial Court, before delivering the judgment. Even in the grounds of appeal before the lower appellate Court, nothing was whispered in this regard.

11. Under the circumstances, it is a futile exercise on the part of the petitioner to come forward with the request, which is far from acceptance. This Court does not find any merit to entertain the relief prayed for. Hence, this revision is dismissed. Consequently, the connected Criminal M.P.No.1 of 2007 is also dismissed.

dixit

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. Fast Track Court No.III,
Dharapuram.
2. Judicial Magistrate,
Dharapuram.

+1 cc to M/s.N.Manokaran, Advocate Sr.No.56786.

AD(CO)
dcp/25.9

CRL.R.C.No.368 OF 2007



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